

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY EDWARD GLASGOW,

Defendant - Appellant.

No. 04-30367

D.C. No. CR-01-60143-MRH

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Anthony Edward Glasgow appeals his 92-month sentence imposed following a jury-trial conviction for possession of more than 5 grams of cocaine base, in violation of 21 U.S.C. § 844. We have jurisdiction pursuant to 28 U.S.C. §

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1291.

We reject appellant's claim that the district court is limited by the maximum terms of imprisonment authorized by the unenhanced base offense levels, under ex post facto principles, as it is foreclosed by *United States v. Dupas*, 419 F.3d 916, 921 (9th Cir. 2005) (holding that retroactive application of *Booker* remedial holding did not violate ex post facto clause).

However, because appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand the sentence for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

REMANDED.